

Before the
Federal Communications Commission
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Sections 309(j) and)
337 of the Communications Act of 1934)
as Amended)

WT Docket No. 99-87

Promotion of Spectrum Efficient)
Technologies on Certain Part 90)
Frequencies)

RM-9332

Establishment of Public Service Radio)
Pool in the Private Mobile)
Frequencies Below 800 MHz)

REPLY COMMENTS OF SOUTHERN COMPANY

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Dated: September 30, 1999

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REPLY COMMENTS OF SOUTHERN COMPANY

Southern Company hereby submits these Reply Comments in response to the Federal Communications Commission's ("FCC" or "Commission") Notice of Proposed Rulemaking in the above-referenced proceeding.¹ In this proceeding the Commission is exploring the extent of its authority under Sections 309(j) and 337 of the Communications Act of 1934 (the "Communications Act"), as Amended by the Balanced Budget Act of 1997 (the "Balanced Budget Act").² The Commission is specifically examining which radio services and spectrum are auctionable under the new statutory provisions adopted in the 1997 Balanced Budget Act. The Commission is particularly focused on what frequencies in the Private Radio Services

¹ The date for filing Reply Comments was extended to September 30, 1999 by FCC Order DA 99-1861 released September 10, 1999.

² Public Law No. 105-33, Title III, 111 stat. 251 (1997).

should be subject to auctions, whether alternative licensing schemes should be adopted and how new auctions should be designed.

Southern Company, through its subsidiary Southern Communications Services, Inc. d/b/a Southern LINC, operates an extensive wide-area SMR system in the 800 MHz frequency range. This system is comprised of frequencies from a number of different frequency pools, including Business Radio, Industrial/Land Transportation, General Category, Upper 200 and Lower 80 SMR channels. Because Southern's system is composed of a mixture of frequencies from different categories, it may be affected by the actions that the Commission takes regarding these frequency bands in this proceeding. For this reason, Southern wishes to submit these Reply Comments, addressing the limited issue of treatment of incumbent systems in bands that may be subject to auctions.

Reply Comments

In this proceeding the Commission has not fully addressed the issue of the treatment of incumbents on frequencies that the Commission may auction. Although there is a recognition on the part of the Commission as well as many commenters that this spectrum is all heavily encumbered, there has been very little, if any, comment on how the incumbents on this spectrum would be treated. The brief mention that the Commission did make of the status of incumbents in its Notice was disturbing. The Commission sought comment on whether or not "relocating incumbents to shared spectrum might also be appropriate for site-based incumbents in bands that are converted to geographic area licenses, for similar purposes of compatibility." Notice at ¶ 71.

Based on the record before the Commission, it is not clear whether the Commission will eventually auction any of the spectrum in the Private Radio Services. Southern realizes that if the Commission auctions any of the spectrum in question, the Commission would need to initiate further rulemakings on specific frequency bands. Nevertheless, Southern believes that there should be a fundamental recognition of the rights of incumbents currently occupying the spectrum. It is Southern's position that the Commission should have a consistent policy towards incumbents in any frequency bands that it auctions, and that these licensees should be due the

same degree of protection and/or relocation rights as the Commission has established in other auction proceedings. For example, in connection with the auction of the Upper 200 800 MHz SMR channels, the Commission adopted a mandatory relocation mechanism for incumbents on these channels. In order to minimize the impact on existing licensees, the Commission required auction winners to provide incumbent licensees with comparable facilities, and if they did not, these incumbents could not be subject to mandatory relocation.³ Also, incumbents could not be forced to be relocated again if they moved to channels that were subsequently auctioned as well.⁴ In the rules for auctioning of spectrum in the General Category and Lower 80 800 MHz bands, the Commission did not require mandatory relocation of incumbents and established protection criteria to prevent infringement on the integrity of the incumbents' systems.⁵ Consequently, the Commission should take a consistent position regarding incumbent licensees if it intends to auction spectrum in which existing systems are licensed.

Accordingly, the Commission's suggestion in this Notice that it might relocate existing incumbents to shared bands is simply unfair, unreasonable and unworkable. Existing licensees have spent significant funds on systems that will operate in a given frequency range. Also, the lower shared bands are even more congested than exclusive-use bands such as 800 MHz. Consequently it is not feasible to suggest that incumbents could simply be moved to these shared bands. Finally, at a minimum, in prior decisions the Commission has established a requirement of comparable facilities and interference protection in regard to incumbents. Accordingly, incumbents licensed in 800 MHz bands should not be treated in a less favorable manner than Commission precedent on this issue would provide.

³ Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Band, PR Docket No. 93-144, First Report and Order, Eighth Report and Order, Second Further Notice of Proposed Rulemaking ("*800 MHz Proceeding*"), 11 FCC Record at 1508, ¶ 74.

⁴ *Id.*

⁵ *800 MHz Proceeding*, Second Report and Order, 12 FCC Rcd. 19079, 19100, 19107, ¶¶ 52, 75.

For the foregoing reasons, Southern strongly recommends that if the Commission auctions spectrum now occupied by incumbent licensees, it adopt policies and rules consistent with its current incumbent licensee relocation standards.

WHEREFORE THE PREMISES CONSIDERED, Southern respectfully requests the Commission to act in a manner consistent with the views expressed herein.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Christine M. Gill", is written over a horizontal line.

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Dated: September 30, 1999

CERTIFICATE OF SERVICE

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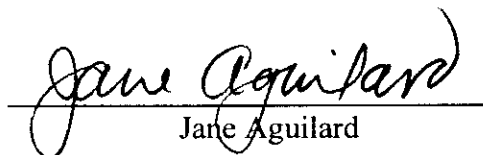
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